

### REMARKS

The Office Action of July 29, 2008 has been reviewed and the Examiner's comments have been carefully considered. Claims 1-34 are pending in the application.

Applicant acknowledges with appreciation the Examiner's indication that claims 19-34 are allowed, and claims 2-18 are objected to as being dependent on a rejected base claim, but would be allowable if rewritten in independent form.

#### Rejection Under 35 U.S.C. § 102(e)

Claim 1 stands rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 7,118,552 to Shaw et al. (hereinafter "Shaw"). The Examiner contends that Shaw discloses a needle assembly including a needle cannula, a hub, a shield 30, a first biasing member 40, a lock 50 in releaseable engagement with the shield parts 320, an actuator 460, and a retaining member 150 in releaseable engagement with the shield part 330. Applicant respectfully submits that the Examiner has mischaracterized element 150 of Shaw as it relates to the present claimed invention.

Applicant's claim 1 recites, *inter alia*: "a retaining member moveably mounted on the hub." Applicant respectfully submits that Shaw does not disclose or suggest a retaining member that is moveably mounted on the hub, or that the retaining member is engageable with the telescoping shield when a blood collection container is received within the needle holder. Element 150 of Shaw is actually a fixed abutment surface that is integral with the frustoconical portion 140 of the proximal portion 80 of the inner holder/hub 20. Accordingly, element 150 of Shaw is a stationary portion of the hub, and is not moveably mounted on the hub, as recited in Applicant's independent claim 1.

As recited in Col. 12, lines 13-18 of Shaw, when the shield 30 is retracted:

Arms 310 and heads 320 of stop members 300 are deflected outwards as they pass over inclined surfaces 160 of frustoconical portions 140 until they have been slid past frustoconical portions 140, at which point they snap inwardly such that abutment surfaces 150, 330 are opposite from one another.

Further, as recited in Col. 12, lines 64-67 of Shaw, “sufficient axial movement of trigger 50 and thus outwards movement of heads 320 causes opposing abutment surfaces 150, 330 to become disengaged, allowing axial movement of outer shield 30.” Accordingly, it is the stop members 300 disposed on the shield that are deflected over the abutment surface 150, and abutment surface 150 remains stationary to, and integral with, the inner holder/hub 20 at all times. Applicant respectfully submits that the abutment surface 150 of Shaw is not equivalent to the retaining member that is moveably mounted on the hub as recited in Applicant’s independent claim 1.

Applicant’s claim 1 further recites, *inter alia*, that the retaining member is:

...engageable with the telescoping shield when a blood collection container is received in the needle holder ... wherein removal of the blood collection container from the needle holder causes the retaining member to disengage from the telescoping shield, thereby releasing the telescoping shield such that the telescoping shield will move toward the fully extended position.

Applicant respectfully submits that Shaw fails to disclose or suggest any apparatus adapted for receiving a blood collection container, or compatible with any sort of blood collection container. Shaw further fails to disclose or suggest that the retaining member is engageable with the shield when a blood collection container is received in the needle holder, as recited in Applicant’s claim 1. Shaw still further fails to disclose or suggest that removal of the blood collection container causes the retaining member to disengage from the shield, as also recited in Applicant’s claim 1.

In contrast, Shaw is directed exclusively to a syringe system. As described in Col. 12, lines 55-67, an operator of the device described in Shaw transitions the shield by pushing thumb push 460 to enter the mouth 111 of the inner holder/hub 20 to contact the trigger 50, causing the trigger 50 to move axially. This axial movement causes outward movement of the heads 320 causing the abutment surfaces 150, 330 to disengage, allowing axial movement of the shield 30. Shaw specifically requires advancement of an integral trigger member 50 to effectuate transition of the shield from the retracted position to the shielded position. In contrast, transition of Applicant’s shield from the retracted position to the shielded position requires removal of a blood collection container from the needle holder.

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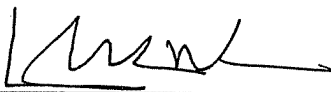
Applicant respectfully submits that a claim is anticipated under § 102 only if each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference (MPEP § 2131). Applicant respectfully submits that Shaw fails to disclose all of the above-described elements recited in Applicant's claim 1, thus Shaw fails to anticipate independent claim 1 under § 102. Reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. § 102(e) is requested.

### SUMMARY

For the foregoing reasons, reconsideration of the rejection and allowance of pending claim 1, and continued indication of patentable subject matter of claims 2-34 are respectfully requested.

Respectfully submitted,

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